

### REMARKS

This Amendment is in response to the Office Action dated October 7, 2003. Claims 1-9, 11-19, 21-22, 24 and 26-30 are currently pending. Claims 24, 26 and 28-29 have been currently amended. Claims 10, 20, 23, 25 and 31 have been canceled without prejudice to further prosecute these claims. Reexamination and reconsideration are respectfully requested.

Claim 24 was rejected under 35 U.S.C. 112 as being indefinite. Applicant has amended claim 24 and respectfully submits that claim 24 complies with section 112.

Claims 1-3, 5, 18-19, 23-24, and 28 were rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent Publication No. 2003/0031068 to Yuan et al. ("Yuan"). The rejection is respectfully traversed.

Claim 1 recites in part that "the conduction layer entirely overlaps the floating gate." It appears that the Examiner's citation to the art does not show a conduction layer that entirely overlaps the floating gate as recited in claim 1. Applicant notes that the floating gate 56 of Yuan cited by the Examiner appears to be wider than the conduction layer 91 as seen in Fig. 5. The Examiner stated that it "would be obvious to one having skill in the art . . . to view the conduction layer to entirely overlap the floating gate, because the functional gate area is the area directly above the channel region as seen in Fig. 5." The Examiner cited no portion of the art that supports his statement. Applicant respectfully submits that the Examiner is attempting to improperly read limitations into the claim language and into the prior art. The Examiner's citations to Yuan show a particular structure that differs from the recited structure in at least the aspect described above. Absent a suggestion in the art for the recited structure, the rejection is deficient.

To establish a prima facie case of obviousness, there should be a suggestion or motivation in the art to modify the reference or to combine reference teachings, there should be a reasonable expectation of success, and the reference(s) must teach all the claim limitations. MPEP section 706.02(j). Applicant respectfully submits that the Examiner's citations to the art do not teach all the claim limitations and do not provide a suggestion to modify the cited art. Accordingly, the Examiner has not met his burden to establish a prima facie case of obviousness. Thus, applicant respectfully requests that for at least the above reasons the rejection of claim 1 and its dependent claims 2-3, 5 and 18-19 be withdrawn.

The Examiner used a similar rationale as described above for claim 1 in rejecting claims 24 and 28. For similar reasons as described above for claim 1, applicant respectfully requests that the rejection of claims 24 and 28 be withdrawn. Claim 23 has been canceled without prejudice to further prosecute this claim if desired.

Accordingly, for at least the above reasons, applicant respectfully submits that the rejection of claim 2-3, 5, 18-19, 24 and 28 should be withdrawn.

Claims 10, 20, 25, 29 and 30 were rejected under 35 U.S.C. 102(e) as unpatentable over Yuan. Claims 10, 20 and 25 have been canceled without prejudice to further prosecute these claims if desired. The rejection of claims 29-30 is respectfully traversed. Claim 29 has been amended to recite a structure including "wherein a conductive material is positioned vertically above the entire upper surface of the floating gate." Applicant respectfully submits that the Examiner has cited no portion of Yuan describing such a structure. Claim 30 has been amended to recite a method including "positioning the conductive material vertically above the entire upper surface of the floating gate." Applicant respectfully submits that the Examiner has cited no portion of Yuan describing such a method.

Applicant respectfully submits that for at least the above reasons, the rejections of claims 29-30 should be withdrawn.

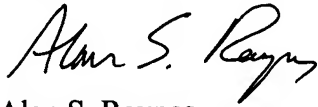
Applicant thanks the Examiner for indicating that claim 11 was allowed and that claim 26 would be allowable if rewritten in independent form. Applicant has rewritten claim 26 in independent form.

Applicant also notes that withdrawn from consideration claim 4 depends from claim 1, withdrawn from consideration claims 6-9 depend from claim 28, withdrawn from consideration claims 12-14 depend from claim 11 (which is allowed), withdrawn from consideration claims 15-17 and 21-22 depend from claim 29, and withdrawn from consideration claim 27 depends from claim 30. Applicant respectfully requests that upon allowance of the corresponding independent claim, the Examiner consider these dependent claims.

The Office Action also included various comments concerning the art and the non-patentability of features in various of the above mentioned claims. The discussion above has directly addressed some of those comments and the Examiner's other comments are deemed moot at this time in view of this response.

In view of the above, applicant respectfully submits that all of the pending claims are in condition for allowance. Should the Examiner wish to discuss this application, the Examiner is requested to call the undersigned at the telephone number listed below.

Respectfully submitted,



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Dated: Jan. 7, 2004

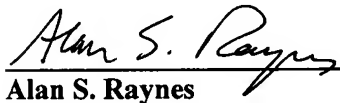
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Alan S. Raynes

January 7, 2004  
(Date)